



COUNCILLOR ELECTION PERIOD POLICY

This Councillor Election Period Policy was adopted by resolution of the Yarriambiack Shire Council on 28 August 2019.

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Introduction & Background

Section 93B of the Local Government Act 1989 requires all Councils to adopt and maintain an Election Period Policy to explain to their communities how they will conduct their business immediately prior to an election period. This policy will ensure council elections are not compromised by inappropriate electioneering by existing councillors; actions and decisions which could be perceived as influencing voters are avoided and the authority of the incoming council is safeguarded.

Purpose and Objectives

This policy provides a framework for Councillors and staff and outlines expected behaviours for the conduct of Council business during the lead-up to the 2020 general election. The policy will ensure that the election is conducted in a transparent and accountable manner; the highest standard of governance is achieved and the statutory requirements of the Local Government Act 1989 (the Act) are met. The policy will achieve greater consistency and rigour in Council procedures and reduce ambiguity and confusion surrounding caretaker arrangements in the 32 days leading up to the conduct of the General Election.

This policy applies to individual Councillors, the Council as a Body Corporate, Special Committees of the Council, the Chief Executive Officer, General Managers, all Council staff and any person acting on behalf of the organisation under a delegation.

Council is committed to: -

1. Avoiding making significant new policies or major decisions that could unreasonably bind a future Council;
2. Ensuring that public resources, including staff resources, are not used in election campaigning or in a way that may improperly influence the result of an election, or improperly advantage existing Councillors as candidates in the election;
3. Ensuring that the ordinary business of Local Government in Yarriambiack continues throughout an election period in a responsible and transparent manner and in accordance with statutory requirements and established caretaker conventions;
4. Ensuring that the ongoing ordinary business of Council is kept separate from Councillors activities which relate to the election;
5. Ensuring that in the lead-up to an election, Council does not make decisions which inappropriately bind the next Council;

Definitions

The Act	The Local Government Act 1989
Election (Caretaker) Period	The election (caretaker) period preceding a General Election. It is defined in the Local Government Act 1989 as starting on the last day on which nomination for that election can be received and ending at 6pm on election day (32 days leading up to General Election day)
General Election	The Statutory process by which Councillors are elected

Major Policy Decisions

Section 93A of the Local Government Act 1989 prohibits the making of “Major Policy Decisions” (Major Policy Decisions has the same meaning as the Local Government Act 1989) during the election period (the period that starts on the last day on which nominations for that election can be received; and ends at 6:00pm on the Election Day). “Major Policy” decisions are defined by the Act to be decisions:

- a) relating to the employment or remuneration of a Chief Executive Officer under Section 94 of the Local Government Act 1989, other than a decision to appoint an acting Chief Executive Officer;
- b) to terminate the appointment of a Chief Executive Officer under Section 94 of the Local Government Act 1989;
- c) to enter into a contract the total value of which exceeds whichever is the greater of \$100,000 or such higher amount as may be fixed by Order in Council under Section 186(1) of the Local Government Act 1989; or 1% of the Council's revenue from rates and charges levied in the preceding financial year;
- d) to exercise any power under Section 193 if the sum assessed under Section 193(5A) of the Local Government Act 1989 in respect of the proposal exceeds whichever is the greater of \$100,000 or 1% of the Council's revenue from rates and charges levied under Section 158 of the Local Government Act 1989 in the preceding financial year.

Subject to section 93A of the Local Government Act 1989, a Council, a Special Committee or a person acting under a delegation given by the Council must not make a Major Policy Decision during the election period for a General Election.

If the Council considers that there are extraordinary circumstances where the municipality or the local community would be significantly disadvantaged by the Council not making a particular Major Policy Decision, the Council will, by resolution, request an exemption from the Minister for Local Government, in accordance with section 93A(2) of the Local Government Act 1989.

If the Minister is satisfied that there are extraordinary circumstances, the Minister may grant an exemption from the application of this section to the Major Policy Decision specified in the application subject to any conditions or limitations that the Minister considers appropriate.

A Major Policy Decision made in contravention of this section is invalid.

Any person who suffers any loss or damage as a result of action in good faith on a Major Policy Decision made in contravention of this section is entitled to compensation from the Council for that loss or damage.

Use of Council Provided Resources to Councillors

Councillors must not unreasonably use any Council resource for campaign purposes during the election period or seek reimbursement from Council for costs incurred for a campaign related purpose.

Incidental use of Council provided resources (such as a vehicle in the case of the Mayor, mobile phone or other device), in connection with any campaign-related purpose and as part of the ordinary course of that Councillor's daily and typical use of such a resource, does not breach Council policies or, in the view of Council, any applicable electoral laws. Council considers that the provision of such resources and their continued use during the election period, including their incidental use in respect of any campaign purpose, does not confer any particular, unreasonable or unfair electoral advantage on a councillor-candidate compared to other candidates.

In reaching this position, Council notes the position expressed in its Expenses Policy that it is reasonable for councillors to use these resources for both Council and incidental non-Council related purposes, and that any out of pocket costs arising from such use for non-Council purposes should not be claimed as reimbursement from Council.

Council has also considered that the use of mobile phones, computers and cars is almost universal in the wider community today and that there is no unique or special advantage conferred on a councillor-candidate by merely continuing to have access to one or more of these resources during the election period.

Council considers that it would be impractical for a Councillor to have to operate two mobile phones or two of any of the other resources merely to avoid use of any one of those Council provided resources in connection with a campaign purpose.

Council further notes that there is no cost or other impact for Council if a councillor uses one of these resources for non-Council purposes. Moreover, Council's Expense Entitlement Policy expressly contemplates this sort of arrangement in relation to mobile phone use and deals with the process for attributing the out of pocket costs of the phone calls between Council related calls and non-Council related calls. However, during the election period, councillors should be especially mindful not to seek reimbursement for any out of pocket costs which arise from a campaign related purpose.

Accordingly, Council has formed the view that it is impractical and unnecessary for current Councillors who are seeking re-election to have to go out and purchase their own devices merely for use during the election period. In fact it is considered that it would be an unreasonable and unnecessary imposition on Councillor-candidates, who for the past four years of their term have had these resources provided by Council, and who if re-elected, would have the reasonable expectation that these resources will continue to be provided to them, if they were forced to have to purchase such resources personally for the purposes of only a matter of a few weeks for use during the election period.

Council further notes that this approach is consistent with the approach adopted in the Victorian Parliament and the Australian Parliament for Members of those places.

Councillors will continue to automatically access council-held documents during the election period, but only as necessary for them to perform their current roles and functions.

Prohibition on Council – Section 55D of the Act

The Council commits to the principle that it will ensure that Council resources are not used inappropriately during a Council election.

The Chief Executive Officer will ensure it complies with Section 55D of the Local Government Act 1989 which requires that a Council does not print, publish or distribute or cause, permit or authorise to be printed, published or distributed an electoral advertisement, handbill, media release, newsletter, pamphlet, leaflet, mail-out or notice during the election period unless it only contains information about the election process.

The Chief Executive Officer will review and certify all publications prior to the commencement and during the election period, prior to ensure that any such publications comply with the requirements of Section 55D of the Local Government Act 1989.

There is a requirement that the Chief Executive Officer is familiar with the requirements of the Local Government Act 1989, and any other requirements, with respect to the printing, publishing and/or distribution of electoral publications.

In accordance with the Local Government Act 1989:

- The Chief Executive Officer must not intentionally or recklessly certify an electoral advertisement, handbill, pamphlet or notice during the election period unless it only contains information about the election process;
- The Chief Executive Officer must not delegate the power to certify any advertisement, handbill, pamphlet or notice under this section to a member of Council staff;
- A Councillor or member of staff must not intentionally or recklessly print, publish or distribute or cause, permit or authorise to be printed, published or distributed an electoral advertisement, handbill, pamphlet or notice during the election period on behalf of, or in the name of, the Council or on behalf of, or in the name of, a Councillor using Council resources if the electoral advertisement, handbill, pamphlet or notice has not been certified by the Chief Executive Officer under this section;

- The requirements, above, do not apply to the publication of any document published prior to the commencement of the election period and to the publication of any document required to be published in accordance with, or under, any Act or regulation;
- Official media statements will only be made by the Chief Executive Officer during the election period, including radio and television interviews. As much as possible throughout the election period, Council publicity and communications will be restricted to promoting normal Council activities and services and informing residents and ratepayers about the election process.

Public Consultation

Consultation forms an integral part of policy development and operations; however, consultation undertaken close to a General Election may become an election issue in itself and influence voting. Issues raised during the consultation and decisions that follow may also unreasonably bind the incoming Council.

If the Chief Executive Officer determines that consultation must be undertaken or an event held during this time, the Chief Executive Officer (on behalf of Council) must justify to the community the special circumstances making it necessary and how risks over influencing the election will be mitigated or prevented.

Public consultation must be undertaken during an election period if the consultation is mandated by legislation.

Where consultation is discretionary then the consultation can occur during the election period but only after the Chief Executive Officer determines whether or not the consultation will influence the outcome of the election. If the matter subject to the consultation is likely to be closely associated in the minds of the voters with a particular candidate or a group of candidates, then it may be prudent for the Chief Executive Officer to delay the consultation until after the election period.

Events

The scheduling of Council events in the lead-up to elections also frequently raises concerns over the potential use by sitting Councillors for electioneering purposes. Events and functions can take many and various forms including conferences, workshops, forums, launches/openings, promotional activities, and social occasions (such as dinners, receptions and balls). Any public consultation or scheduling of Council events during the election period will be reviewed by the Chief Executive Officer who may determine that an individual activity or event is:

- not permitted to proceed; or
- is permitted to proceed but subject to any restrictions which the Chief Executive Officer may impose.

Equitable Access to Council Information

Council's Election Policy is required to include procedures to ensure that access to information held by Council is made equally available and accessible to candidates during the election.

The Council recognises that all election candidates have the right to access information from the Council, subject to the Privacy and Data Protection Act 2014.

Neither Councillors nor Candidates will receive information or advice from Council staff that might be perceived to support election campaigns, and there shall be complete transparency in the provision of all information and advice during the election period.

Councillors will continue to receive information that is necessary to fulfil their elected roles, particularly in regard to information relating to Council Agenda and Briefing items currently under consideration.

Provisions of Council Information to Councillors and Candidates:-

- Information and briefing material prepared by staff for Councillors during election period will relate only to factual matters or existing Council services. Such information will not relate to policy development, new projects or matters that are the subject of public or election debate or that might be perceived to be connected with a candidate's election campaign;
- When a Councillor wishes to request information for their use as a Councillor (e.g. a briefing from Council Officers, access to information on Council files), the Councillor must make the request through the CEO. This protects both Councillors and Officers from any accusation of "inappropriate interaction" and/or "undue influence". It also allows the relevance of the information requested to be determined in relation to current Council business;
- Council staff will not directly provide Councillors or Candidates with information but will refer any direct requests for information to the CEO during the election period.

An Information Request Register will be maintained during the election period. This Register will be a public document that records all requests relating to electoral matters and non-routine requests for information by Councillors and Candidates, and the responses given to those requests.

Council Staff Activities During An Election Period

Council staff should not undertake any activity that may influence the outcome of an election, except where the activity relates to the election process and is authorised by the Chief Executive Officer.

Council staff should not authorise, or allocate a Council resource for any purpose which may influence voting in the election, except where it relates to the election process and is authorised by the Chief Executive Officer. This includes making Council resources available to Councillors for campaign purposes. Council staff must not assist any Councillor with their election campaign at any time, including outside work hours.

Where the use of Council resources could be construed as being related to a candidate's election campaign, the incident must be reported to the Chief Executive Officer.

Record Keeping

The Chief Executive Officer shall keep a documented record of all:

- documentation reviewed;
- documentation approved;
- media or other statements released;
- information or advice provide on request to a sitting Councillor or candidate;
- information relating to events and consultation permitted to proceed, under this policy during the election period.

Responsibilities

The Chief Executive Officer is responsible for overseeing adherence to the Election Period Policy.

Councillors and staff are responsible for reporting any breach or suspected breach of this policy to the Chief Executive Officer.

Election Period Procedure

Operations

This procedure applies during the Election Period, commencing on the last day on which nominations for that election can be received and ending at 6pm on Election Day. The procedure is to be used for certifying any publication, pursuant to section 55D of the Local Government Act 1989.

Background

All requests for advertisements or publications during the Election Period must be certified by the CEO, to confirm that they do not contain election material, prior to being printed or published or distributed. No electoral material will be placed on Council's Websites or social media during the election period.

Process

- All publications during the Election Period must be emailed to the Executive Assistant to the CEO – bpenny@yarriambiack.vic.gov.au so that arrangements for certification can be made. If there is any doubt about whether the material is subject to the procedure, it should be forwarded to the above email address, for checking.
- The role of the Executive Assistant is to read the proposed publication and check that no election material is present (unless it is factual election process information).
- Executive Assistant will send the proposed publication to the CEO via email with suggested wording as set out below.
- CEO to send back approval and certify in writing (email is acceptable and preferable). CEO to use a corporate signature that is used in emails, certification wording as below. This certification power cannot be delegated to any other person.
- When certification is received back from CEO, the email is to be saved and filed accordingly. This will enable a record to be maintained of all certified publications.

Standard statement to accompany Executive Assistant email to CEO.

“This material has been checked and does not contain any electoral or electoral related matter to the best of my knowledge. In accordance with the requirements of s 55D (1) of the Local Government Act 1989”.

Standard certification to be used by the CEO as part of “corporate signature” for certification emails:

“I certify that the attached material is suitable for printing, publishing or distributing on behalf of Yarriambiack Shire Council”.

References

Local Government Act 1989
Councillor Code of Conduct
LG Investigations & Inspectorate Election Policy Review 2016
Victorian Electoral Act 2002
Councillors Expense Entitlement Policy
Privacy and Data Collection Act 2014

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